MR. JUSTICE CREASE.

JUDGMENT.

BISHOP OF COLUMBIA *versus* REV. MR. CRIDGE.

Judgment rendered on Saturday, October 24th, 1874, at 11:20 o'clock, A. M.

This is a case of an application for an injunction on a bill filed by the Lord Bishop of the Diocese of British Columbia against Rev. Edward Cridge, clerk, praying that the defendant may be restrained from preaching or officiating in the cure of Christ Church and from acting elsewhere in the diocese as a clergyman of the established church, and for a declaration that the defendant's license has been duly revoked and that the defendant has failed to conform to the discipline and doctrine of the Church of England, and is liable to be removed, and is no longer entitled to the benefits of the trust of the Indenture of 6th May, 1864. The present application is for an injunction to restrain the defendant from "preaching or officiating in the said church of Christ Church or otherwise acting in the cure of the said church according to his former license or elsewhere in the diocese as a minister of the Church of England."

The Bill sets out the Letters Patent and consecration of the plaintiff to be Bishop of British Columbia, his arrival here and license granted to the defendant to "preach and officiate," his selection of Christ Church to be his Cathedral, his collation thereafter of the defendant to be the Dean of the said Cathedral Church.

Certain Articles, eighteen in number, are then set forth in the Bill, impeaching the conduct of the defendant in his ministry, appended to which are many letters and documents, some of great interest to the parties to the correspondence, but not very important to the determination of the precise question before me. Whether the allegations of the articles thus stated are to be taken as allegations made in the Bill itself may or may not be an important question at the hearing. The question whether they are well pleaded by this bill has not been raised on the arguments now before me, which, in justice to the defendant it must be said have been directed more to the matters really lying at the root of the unfortunate differences between the plaintiff and defendant than to the technicalities or forms of pleading, or even to the facts really necessary to be considered for the determination of this interlocutory application.

The question whether the Attorney General should or not be a party, was in like manner banished from the argument probably through similar considerations; and the parties did not conceal that their chief desire now was to obtain from me an expression of my views upon the two very interesting questions, viz.: the visitorial powers of the Bishop and the legality or legal consequences of holding synods, the latter of which, however, could not, except in a very indirect way, come into consideration at all.

As the result of the inquiry upon the articles referred to the Bishop's assessors found all the charges of infraction of clerical duty to be proved, except two numbered 9 and 10. Sixteen articles therefore were reported as proved. The Bishop thereupon delivered judgement on each of the proved charges separately, on the 17th of September, 1874. The investigation had been open. There were four assessors, two clergymen and two laymen, County Court judges, one of whom was compelled to retire on public business after the first day. The investigation continued *de die in diem* for four days, viz.: on the 10th, 11th, 12th and 14th of September, the defendant having had ample notice, and being in fact present, and with every opportunity apparently to examine or cross-examine witnesses. He seems, however, to have remained as a spectator, merely, after handing in a protest against the proceedings. The form of the address in which the sentences of the Bishop in respect of the several charges proved, is not perhaps, free from being excepted to. But neither, usually is the address in which an ordinary court of justice conveys its reasons for a decision. The separate sentence on fourteen of the proved charges is revocation of the license on one, viz.: that on Article 17, a formal admonition and then, without noticing 18, the Bishop says, he must still add further punishment and decrees suspension from the Deanery, and then gives as his judgment, on the whole proceedings, to be revocation of the license to preach and officiate, suspension from the office or dignity of Dean until submission and a formal admonition. This is the sentence, in fact, the logical results of which the plaintiff now seeks to have enforced by the decree of this Court

In considering whether this Court will grant its auxilliary aid, the only questions to consider are those which arose in Dr. Warren's case, and in Long vs. The Bishop of Cape Town. The Bishop having no coercive jurisdiction, had he, however, jurisdiction to summon the defendant to enquire into his conduct, to pass this judgment spiritually as it may be said. Unless he had such a right this Court will not interfere or assist him in any way. Neither will this Court assist him if it appears that the proceedings were conducted in an oppressive way, or in any manner contrary to the principles on which questions are examined and determined here. Neither will it assist him if the sentences appear to be disproportionate to the alleged offence, or contrary to public policy, to be allowed *e g.* If the defendant had been sentenbed to do penance in a sheet with a taper, I do not think this Court would have anything to say to such a sentence as that, or if he were sentenced to deprivation or suspension for once omitting a genuflexion. The best test to apply is this: Fortunately we are a branch of the Church of England not "in union and full communion" only, but a branch of that very church. If we had here establishd synods and canons and regulations of our own, the investigation now wouldbe more intricate and difficult, according to the observations of the Master of the Rolls in Natal vs Gladstone, p. 37, here all we have to enquire is whether the offences alleged would, if committed by a clerk in England, be triable before the Bishop of the diocese, and punishable as this is punished, and I apprehend that there is no doubt but that these questions must subject to some observations about the Church Discipline Act, and the different relation of the Bishop here *qua* patronage, be answered in the affirmative.

In my opinion the Church Discipline Act—3 and 4 Vict., c. 86—it is impossible to comply with here, at least in its entirety, and therefore at least, in its entirety is not law. In particular, it would be impossible to have a tribunal of the five assessors therein referred to. The assessors chosen here were, however, a better tribunal than I should have expected to have found here. The defendant objects first that none of them belonged to the section of the church to which he says he belongs, and the argument addressed to me seemed really to have been that he was entitled to have one or two partisans among the assessors, perhaps on the principle of a jury de medietate, which is now abolished, in civil cases as from January 1st, 1873. But of course there was no shadow of reason in such an objection. The next objection was that inasmuch—it is not very easy to state it—inasmuch as these assessors might more closely have approximated to the assessors described in the Church Discipline Act, though I can scarcely see how, therefore these proceedings were a nullity. But, 1st. It was not shown that better assessors could have been procured. 2nd. It is not pretended that even in England the assessors *must* be of the character in the Act mentioned, but only that such assessors will be considered satisfactory. 3rd. It is not pretended that the Act is applicable here, or is law here at all. To impugn a judgment (if otherwise reasonable) because the proceedings on which it is based, do not tally closely enough (as alleged but not proved) with certain proceedings mentioned, not required in England by a statute which is non-existent here is surely rather far.

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Then Mr. Robertson urged that the Bishop here as a matter of fact appoints and licenses all the different ministers in the diocese to their different cures; that by revoking defendant's license, by suspending him, by perhaps ultimately depriving him of this cure altogether, he will acquire a right of presentation to this cure, (which I observed counsel on both sides carefully abstained from calling "a living") and that this right of presentation is an interest in the Bishop, which disqualifies him from being a judge, even in the preliminary matter of censure; for it was urged, the neglect even of a censure may lead to further ecclesiastical proceedings, and so up to the most hardened contumacy, and incurable obstinacy, only fit to be cut off. And the presence of an interest in a judge utterly disqualifies him and annuls his judgment. Now I am not sure that interest must not mean some interest which might be turned into cash. Apart from the simoniacal odor of such an idea, it is not shown to me that this right of presentation is of the smallest money value. But in the next place the argument is not pushed, nearly far enough, but is ingeniously placed just far enough to embrace the defendant's case and no other. If it be unlawful for the Bishop to censure because the neglect of that may lead to suspension and so on, neither is it lawful for him to direct, because the neglect of his direction may lead to a censure and the neglect of censure to suspension, and so on. On the other hand the Bishop here qua Bishop appoints not only to this cure, but to every cure in the diocese. So that the argument fairly carried out is this: That because a man is the Bishop of the diocese, *therefore* for that reason alone, *virtute officii*, he is debarred from either directing or suspending any of the inferior clergy whom he may once have appointed to a cure, notwithstanding any solemn vows and promises they swore to God, and to him when he placed them there. In fact that on the sole ground of his being a Bishop, he is disabled from being a Bishop. For I wish again to impress upon the defendant the consideration which I threw out in argument, that the very first and highest trust and duty, more than a right or privilege of a Bishop—his *ratio existendi*—the reason for calling him what he is called is that he is to visit his clergy, "Bishop," "Visitor" "Overseer," the three words are almost identical; and the chief difference between them is that they are derived from the Greek, Latin and Teutonic roots respectively. In at least one place of the new testiment the authorized version translates, "EPISKOPOS" (Episcopes) by the word 'Overseer" Mr. Robertson's argument came to this; That because the duties of an overseer are ou here somewhat incomparable therefore he could not oversee; at least that though he might lawfully perform such duties as the defendant like he was not to perform such duties as the defendant objected to; for it is to be observed that this is just as much an objection to the power of appointing, as to the power of censuring. The two powers it is said, are incompatable, therefore I claim, says the defendent, not that both powers are void, but that I may treat the one as valid, the other as invalid The Bishop may lawfully appoint me, but cannot lawfully censure me. But in fact contradictory powers are often in case of necessity placed in one hand. In this very Colony there is almost a case in point. Nothing surely can be more important than to keep quite distinct the judicial and executive functions. No maxim of our criminal court is better known than, that in the absence of counsel, the judge is to be counsel for a prisoner. Yet the legislature has thought it expedient by repeated acts which have always obtained Her Majesty's sanction to leave it to the judge to nominate a sheriff *pro re nata*, and in criminal trials up the country it has occasionally happened in the absence of any caunsel for the prosecution that the judge has been compelled to indicate to the registrar or to a constable, what statute appeared suitable for the occasion and in what book the form of the indictment was shown. In fact all these regulations are means to an end—that end is the administration of justice and the repression of disorder—and to adhere to forms and principles in such a way as to suffer crime to go at large unpunished, and disorder to be unrestrained, would be "to neglect the oyster for the sake of the shell."

Ecclesiastical Tribunals have always been negligent of the forms which English Lay Tribunals have deemed useful, and all but Essential. I say English Lay Tribunals, for in many other countries, other principles than ours are considered to be most conformable with the administration of justice. And the most prejudiced mind must admit that sentences may be just though not arrived at by the machinery of a jury. The judgments of Solomon have been considered as not without merit, though every one of them outrages the whole spirit of Magna Charta. In considering the charges, and sentences of September last, I think however, that as to the scene in the Cathedral, of the 5th December, 1872, it was not competent to the Bishop to renew any charge or inflict any further punishment for that offence. *Habemus Confitentem reum* nobody disputes—not Mr. Robertson himself, that there was a clear breach by the defendant not only of the Canons of the Church and of the laws of Christian Charity and decorum, which are not always present to our minds, but of social etiquette and propriety—restoaints to which we are more habitually accustomed, every one of which forbad the defendant from thrusting himself forward in the presence of two Bishops, one a stranger to condemn a brother Prest yter, in terms which the defendant himself seems to be aware "exceeded the accustomed restraints of language and conduct." (Vide defendant's address of March 28th, 1874.) Really I cannot conceive any other course to be taken by the defendant himself than to say as soon as the irregularity was pointed ont, or as soon as he had sufficiently recovered his "accustomed restraint of language and conduct," "I see I have clearly broken the canon which I swore to observe, and I have contravened the statute by which all men are bound, and I have clearly exposed myself to suspension, I am very sorry and beg you will remit the punishment." It is needless to say that he never says anything of the sort. However, I consider that the Bishop has dealt with that offence by his censure of the 14th December, 1872. And *nemo bis debet vexari* is a maxim which our law has borrowed from the Romans and which I think is of natural justice." I think therefore, the Bishop had no right to renew that charge in Pandora street. Of course the defiance with which the defendant met the censure was a new act of disobedience, and it is not easy to see the real grounds for it. That might well justify a new punishment. Up to the 25th day of March last, the defendant seems to have supposed that he was resisting "an attempt to defame his ministry and to intrude on his office which he had received in trust for the church as well as himself," "that his office or his trust was in danger." That, I suppose, must refer wholly to the sermon of Archdeacon Reece, as to which it is difficult to perceive how it would affect the defendant at all or any right or privilege of his. But afterwards in the letter of the 3rd of July, he takes, I think, other grounds; at least he expresses what perhaps may have been only intended before; and after referring to some opinions of the Churchwardens (not necessarely, though possibly, those contained in their letter of the 2nd of July,) and taking more intelligible ground (as might be expected) than they do, he points out that the proposed Synodical movement might result in placing himself and his congregation under a different law than that of the Church of England. This I have already stated my firm conviction to be a very real apprehension. It may be a danger to be avoided, it may be a benefit to be desired, but so sure as this Synodical movement does proceed, so surely as the church here assumes power to make laws and constitutions for this diocese, and to constitute the Bishop an Ecclesiastical Tribunal with power to enforce obedience and no appeal except to the Archbishop of Canterbury for the time being, as a *forum domesticum*, so surely will the church here (I fear) one day differ widely from the Mother Church in forms and ordinances and matters of Church Government, and probably also by degrees, even in some particulars of doctrine. I was about to refer to Lord Romilly's judgment in "The Bishop af Natal vs. Gladstone," but I find I have nearly repeated his words which have imprinted themselves on my memory.

The position advanced at the bar, however, and which was probably necessary for the rebutting the whole case

of the plaintiff went far beyond this. Had the defendant confined himself to the reasonable view which it might be contended was all he meant in that letter of the 3rd of July, what may in fact be a fair construction to put upon it, prefaced with an acknowledgment of his error. If he had said "my breach of the canon and of the statute and of good manners, I am heartily sorry for, and I fully intend to offend so no more, and I thank you for your lenity in only censuring me for my offence, I know that every man in the diocese whose opinion is worth caring for, my own counsel and all, are heartily sorry that I acted so. Your visitation I will dutifully receive. Everything shall be at your service. The pulpit of the cathedral I have no thought of closing to you, but as to the synodical movement which your lordship is so earnest in pressing on my congregation and elsewhere in your sermons and discourses, I would with like earnestness entreat you to consider and well weigh Lord Romilly's words. I know it is not for us to judge of your doctrine, but for you to judge of ours. But this is a point of practice and expediency not of doctrine and we wish to remain under the laws of the Church of England which we know, and not to be liable to future laws and law makers of which we know nothing, and under which old decisions will not aid us to understand our rights and duties. We wish to adhere to the supremacy of the Crown, and the decisions of Crown Courts, and not to have any *forum domesticum* with which we are unacquainted, and which may imperceptibly as Lord Romilly points out constitute the church here to be a separate church, the Church of British Columbia, and not a branch any longer of our old Church of England." If I say the defendant had spoken thus, who could have been offended? I for my part not now speaking as a judge at all, but as a member of the church out here really feel disposed to say that I have myself felt inclined to make such an appeal And it will abundantly appear in the course of these observations that the fact of the plaintiff's having hitherto failed to carry out his apparent intentions is not unimportant for the success of the present application

For it is to be noticed that up to the present time there is not the least indication—there is no evidence and no argument—that the church here is not a branch of the Church of England, to be governed and guided by all her practices and discipline by which all her members are bound, and defective only in this respect, that when such practice and discipline requires to be legally enforced by the strong arm, that strong arm must be put in motion by the judgment of this court following (if it thinks fit to follow) the sentence of the Bishop, and it may not be put in motion by virtue of the sentence of the ecclesiastical *forum* alone as in England. That is all the difference. I am bound to examine to a certain extent the sentence of the Bishop; if I find it in conformity with the practice in the Established Church of England I am bound to order it to be enforced; then the force if necessary is applied under my order not purely as in England on the episcopal authority; and the disobedience then becomes and is punishable as disobedience of my order and not as disobedience only of the Bishop's order. The circumstance that the plaintiff has hitherto failed to carry out his apparent or presumed intentions as to a synod is also to myself personally a matter on which I most sincerely congratulate myself, and for this reason, I mean not now to express my personal predilections at all, but sitting here as a judge I feel how immensely my responsibility is lessened and my ability for comprehending the position increased in comparison with the occasion when somewhat similar questions were brought for the first time on somewhat similar disputes before the Supreme Court in South Africa. Since that time a flood of light has been poured upon the constitutional questions, and the relations of ecclesiastical and civil jurisdiction in the colonies by the labors of the great judges and civilians in the Privy Council and elsewhere, and the whole matter has been discussed repeatedly in various courts on various rights, by various minds of the most learned lawyers and most sincere and earnest churchmen and statesmen in England, and has been placed if I may without presumption say so upon a clear and satisfactory foundation. Of all that light and of all those discussions I can now avail myself.

But if a voluntary association out here had been formed of persons holding the doctrines of the Church of England but rejecting or altering wholly or in part the discipline and government of the Church of England —that would be a course perfectly open to any number of persons to pursue I apprehend, and the present Bishop might be among them—but that association would not be an actual branch of the Church of England, though it might insist that it was in full union and communion with it, and held all its doctrines. If dissensions arose in such an association, its members would have recourse to the civil tribunals and any questions would have to be tried by their own rules and ordinances, which would have to be proved by evidence in the usual manner, and have to be construed by the Court just like the regulations of a new joint stock company. I need not point out the additional difficulty and responsibility which would thereby be imposed on the judges, and the additional uncertainty and insecurity felt in any construction to be placed on such ordinances; the decisions of English courts would not be binding and might not be apposite, not being *in pari materia*.

Fortunately no such case exists here. The jurisdiction here episcopal, judicial, and consensual, appears to be exactly the same—founded on instruments verbally identical—with the case of the See of Natal (Bishop of Natal vs. Gladstone). What that is may be given in the words of Lord Romilly. After stating at very considerable length all the circumstances and the different cases in which the unfortunate differences between Bishops, Deans and Ministers in South Africa had been discussed, he says, "The result shows that the District or Colony of Natal is a district presided over by a Bishop of the Church of England which is properly termed a see or diocese; that the ministers, deacons and priests officiating within that diocese and also all laymen professing to be members of the Church of England, constitute not a church in Natal in union and full communion with the Church of England, but a part of the Church of England itself; and that all the ministers, priests and deacons there officiating and all persons composing the several flocks are members and brethren of the Church of England in the strict sense of the term. The consequence is, that they have in all matters ecclesiastical, voluntarily submitted themselves to the control of the Bishop of Natal, so long as it is exercised within the scope of his authority, according to the principles prescribed by the Church of England. If, however, any sentence of the Bishop of Natal should be contested, recourse must be had to the courts established by law which will enforce that sentence if pronounced within the scope of the legal authority of the Bishop, and if he has in arriving at the sentence proceeded in a manner consonant with the principles of justice, and in so doing the Court established by law will proceed upon the laws of the Church of England. So far as they are applicable in Natal," *i. e.*, the spirit though not the letter of the Church Discipline Act, is to be adhered to. It is not law here but it is to be taken as a guide. Now I apprehend every word of that quotation is not only very good law, but very good sense, and not only good sense and law, but a most convenient law for the protection of rights. Not only for obtaining judicial decisions upon them, but for knowing beforehand and without litigation, the limits of rights and duties of all members of the Church laymen and clerical. It only requires that the name should be changed; for "Natal" read "British Columbia," and on this particular point it exactly states the position here.

These considerations make it clear as I have said before, that it was necessary for the defendant's case to go far beyond any reasonable or indeed possible construction of the defendant's letter of the 3rd of July, even if that letter embodied or referred to the churchwardens letter of the 2nd of July, which it is by no means clear that it did. The defendant cannot maintain his present position of preaching and officiating in Christ Church or in any Church of England in the

diocese or at all as a clergyman of the Church of England, by maintaing his right to do what he did on the day of the consecration of the new Cathedral, which was the position he took on the 28th March. It is not enough for him now to allege as in his letter of the 3rd of July, vague charges of the "illegality of the Bishop's proceedings in sundry matters affecting the church," or the Bishop's "endeavoring to draw defendant and his congregation" away under another law than the Church of England's or preaching doctrines offensive to the defendant, though the question "synod or no synod" is surely no question of doctrine at all, but anly of expediency or utility. It is not even enough to allege as in the churchwardens letter of the 2nd of July (but I again observe that I do not think it proved that the defendant has assumed the responsibility of this letter) but it would not be enough to allege as is there alleged in the alternative "that the Bishop appears to have seceded fram the Church of England, or if he have not seceded that he is at least guilty of a misdemeanour." All these allegations might be made and might be capable of proof, and yet until proved and followed by the sentence of deprivation of his see, pronounced by a court of competent jurisdiction, the Bishop would still be bishop, and his acts would he episcopal acts and claim obedience from all his clergy until declared null by a competent court. For the proper defence of the position taken by Mr. Cridge, his able counsel perceived that nothing of that kind would suffice; that nothing would do but to contend that his client was not and is not an unlicensed clergymen of the Church of England, for that he once had a license and that the license had never been revoked by a Bishop of the Diocese. He therefore boldly, but by the necessity of his argument, advanced the proposition that the Bishop is in very fact not a bishop at all, but an excommunicated person to whom no member of the Church of England owes any obedience and is indeed to be avoided, according to the 33d article of Religion. And to support that position he read from the 12th Canon, A. D. 1603, as follows: "Maintainers of constitutions made in conventicles censured," "Whosoever shall hereafter affirm that it is lawful for any sort of ministers and lay persons or either of them to join together and make rules, orders, or constitutions in causes ecclesiastical without the King's authority and shall submit themselves to be ruled and governed by them, let them be excommunicated *ipso facto*, and not be restored until they repent and publicly revoke those wicked and anabaptistical errors" Now the first observation that arises on that is, that if there were anything in the objection, Mr. Long and the Bishop of Cape Town, and the Bishop of Natal and Mr Gladstone and Lord Hatherly, the Coleridges, Roundell Palmers, Baddeleys and other learned civilians the Lord Chancellor and members of the judicial committee, who have been engaged for so many years in sifting the South African cases, had all been beating the wind, and expending all their learning and acuteness and distilling principles out of the Alembic of Ecclesiastical suits, Privy Council appeals and Chancery suits to very little purpose Indeed all that has been said in all these complicated reports is quite unnecessary and may be treated as *obiter dicta*, if this contention is maintainable. For nothing I suppose is clearer than that Bishop Gray had actually carried into practice in long detail and personal application everything and more than everything that the present plaintiff is even supposed not ever to have done, but to have wished to have done. But in that case Mr. Robertson's argument would be very short. Bishop Gray from the moment he asserted the legality of a synod, ceased to be a Bishop at all of any legal diocese (I do not know that it is necessary for the argument that he *ipso facto* ceased to be what may be termed a Bishop unattached), consequently from that moment had not nor could have any jurisdiction *qua* bishop over any member of the Church of England. It is odd that nobody ever thought of that before, that is it would be odd, if there were any show of reason in the argument. But in fact the errors denounced by this canon are as it expressly says, "*an abaptistical* errors." In the previous century, scarce a generation before the canons, certain fanatics, with a large support of the ignorant masses set themselves up as inspired by an inner light, and authorized by it to announce a new order of things. Their code of morals was that to the truly righteous all things were lawful. The priesthood they announced to be a general dignity to which all men might aspire. As to temporal things their argument was very short. It consisted of three plain and very intelligable sentences: "The earth is the Lord's and the fullness thereof." "The Lord hath given the earth to be an inheritance for his Saints" "*We* are the Saints" The conclusion was obvious. The name of the "Anabaptists" was given to them, not without some injustice to the original proprietors of that designation; but it remained with this new sect, if they they can be called a sect. It is not quite clear that their principles are wholly extinct. However these men carried their principles into forcible operation throughout some of the principal provinces of Europe. They contrived to combine in a great measure the excesses of the Paris Commune with the excesses of Brigham Young. They were not put down without fire and sword; many towns and cities were devastated either by them or by their opponents in quelling them The fate of one of their leaders known as "The Prophet" has inspired one of the greatest of modern composers in the production of a great work of art, and I should have thought that modern popular melody might have conveyed a ray of history which in its turn might have thrown a light on theology sufficient to raise some doubt at least as to the construction of this canon. It is expressly aimed at disowning on the part of the Church of England the ecclesiastical part of the usurpations of these Anabaptists whose very name inspired horror as that of the *commune* does to-day. Their views on temporal matters it was probably supposed might be safely left to the secular legislature. The canon confines itself to their spiritual excesses. But what can equal the imprudence of the defendant's advisers in suggesting these reflections? Is it the plaintiff who affirms that it is lawful for "any sort of ministers", i. e., unlicensed preachers or others, to join with "lay persons" whether churchwardens or not and make rules and regulations or adopt resolutions without any authority or color of authority whatever from the Crown, either by direct commission or by any Act of Parliament or through the ordinary Courts of Justice? Is it the plaintiff who alleges that such an unlicensed preacher with his lay partisans may, by the simple expression of their opinion, annul the Queen's Letters Patent, fulminate sentences of excommunication and deprivation, come to a resolution that their leader is entitled to the full enjoyment of valuable lands, decide on the interpretation of a deed of trust and determine that the same leader is entitled to the benefit of that? and absolve whom they please from the observance of solemn vows? Is it the plaintiff who advances these preposterous pretentions? Do these terms convey an exaggerated expression of the defendant's case?

It is hardly worth while to go on breaking this butterfly on this wheel. Yet these further observations may be useful which by themselves dispose of the whole argument on this head, even if my view of the meaning of the Canon drawn from history be wholly wrong. It is quite true, as Mr Long observes in his letter, (cited and approved by Lord Romilly, p. 48) that a man even a Bishop, may by his own act secede from a church. Even secession, however, would probably still leave him a Bishop until he be deposed or deprived, by the sentence of a competent court consequent on his secession. But still if a Bishop had openly announced his secession, that would greatly excuse the disobedience of his clergy even before any formal sentence of deprivation. What Mr. Robertson failed to establish is the first step, that a man can commit excommunication upon himself or declare himself excommunicated. All he can himself do in this way, is to excommunicate all the rest of the world, as I believe one or two fanatics have been found mad enough to do by declaring all mankind eternally lost except themselves. A man may undoubtedly commit an offence which exposes him *ipsofacto* to excommunication; that is when brought up before a proper court, the accuser has but to examine this one point: if proved,

sentence of excommunication may be pronounced at once, without more. It is probable also that in such a case the consequences of the sentence, when pronounced, would have reference back to the heretical, or other act, on which the sentence is based; much in the same manner as an adjudication of bankruptcy relates back to the act of bankruptcy, and does not count for all purposes, from the date of the adjudication only. Here there is no definite act or bankruptcy even alleged. But sentence of excommunication be pronounced. It must be pronounced by acompe court, and after a trial at least conformable with natural justice, upon proof, and after summoning the accused. And sentence of excommunication may be followed no doubt in the case of a Bishop by sentence of suspension or deprivation, or such other sentence as a court of competent jurisdiction may think fit to pronouce, if any. But that too must be by a court of competent jurisdiction,, after a trial consistent with natural justice and so on. It would be a poor jest to ask if any such investigation or sentence has taken place. But what is, perhaps, not uninteresting to remark, is the extraordinary incapacity of even the most conscientious man to act towards others on the golden rule of doing as he would be done by. Here is a man who, for offences really open, glaring, not denied, but gloried in, offences against canon law, against statute law, against common sense and ordinary good manners, after the utmost lenity and forbearance shown towards him, is at last cited, before a self-organized tribunal, not a court of course in any legal sense, or with any legal powers, but as good a tribunal as could be formed in the diocese—clearly as respectable a tribunal as any Chamber of Commerce or Board of Surveyors—and after weeks of notice, and days of trial in his presence, is at last found, by that so-called "Court or Board of Inquiry" to have committed acts which, as I have said, be never denied, and openly glories in; and yet for weeks the whole city has been disturbed by the vociferous clamours of his partisans—I will not say of himself, for I believe he is but the instrument of others—against the illegality, the injustice, the monstrous nature of the tribunal, and the finding and the sentence: and at least if the defendant does not openly join in these clamours, he utters no word to brand them as unfounded and slanderous. Nay, his counsel here argues most temperately and discreetly I admit, but still vigorously, on the same side, namely, that the sentence against the defendant was inconsistent with natural justice. And yet this same man thinks it consistent with natural justice, and that he is dispensing to others the same measure of justice, wherewith he seeks to be judged himself, that the Bishop should be held to have lost his whole position without any trial, by the sentence of no court or any tribunal resembling a court, without notice, without summons, without being even put on his defence, by a mere oral suggestion of counsel. Surely the old proverb of straining at a gnat and swallowing a camel never received so exaggerated an illustration!

The position and status of the plaintiff here seems to be much misunderstood The fact is that the Lord Bishop of British Columbia holds his jurisdiction, his powers, and his authority so far as it can be derived from any temporal authority, from the same Royal and Supreme Source of all authority in the British Dominions, by an instrument as solemn as I hold my own Commission and derived directly from the Crown under Her Majesty's Sign Manual. It is true the powers so given require to be supplemented, some of them by the authority of an Imperial or local Act of Parliament. My own commission is sanctioned by both, and that being the method by which Her Majesty can constitutionally give coercive jurisdiction, coercive jurisdiction is placed in the hands of myself and the different judges in the various Supreme Courts throughout the British Dominions. Now the plaintiff's Letters Patent assume to give him full jurisdiction, and they would probably have at once given him such jurisdiction if his diocese had been in a Crown Colony,—though I rather doubt this—but the terms are certainly ample to give him full jurisdiction, and would do so if the Letters were based on, or confirmed by, an Act of Parliament. Possibly if a local Act were passed here, recognizing or confirming the Letters Patent, the Bishop would have full coercive jurisdiction as from that time. I am far from saying that this is probable or even desirable. I think that such jurisdiction is much more safely and beneficially for all parties, placed in the hands of this Court. Not that I have the smallest opinion that my judgment is superior to that of the plaintiff, on the contrary, I wish to be understood as placing very little confidence in my own judgment. But I have the greatest confidence in the Judicial Committee of the Privy Council, and so long as the plaintiff's sentences have to come to this court to be enforced, he and all the church here, and in fact all denominations and religions have the advantage of the appeal to the Privy Council, which otherwise would not lie, but there would be only an appeal from the plaintiff to the Archbishop of Canterbury for the time being. Now placing as I do, great confidence in the wisdom and learning of that great prelate and of those who may succeed him, I must say that I nevertheless feel very much more confidence in the wisdom, in the learning, and above all in the coherency and consistency of the Judicial Committee, than in the decisions of a series of Archbishops of whatever see. Then besides the secular jurisdiction thus imperfectly bestowed, the plaintiff has his spiritual authority derived from the imposition of hands, which though vague, and I conceive, left by our church, purposely indefinite, can never be treated by any churchman as less solemn on that account, but rather as all the more impressive. He is sent out here by all the authority of the Crown and of our church not to be taught, but to teach orthodoxy, not to be reviled, but to reprove error, and to receive all due obedience from the members of the Church of England here.

The Bishop till he be duly deposed or deprived will be considered as a Bishop exactly in the same way as a licensed clergyman until his license is duly revoked, is to be considered a licensed clergyman still, whatever his offence. I should wish Mr. Robertson to try and find out how loudly his client would have protested if the Bishop had said nothing for the last two years; no Pandora street trial had taken place but,—Mr. McCreight had suggested yesterday for the first time, "Oh! the defendant appears to us to have committed an offence on the 5th of December, 1872, for which the statute says the Bishop should suspend him. It is true we have never mentioned the matter since then, but we now submit that he must be considered as having been suspended as from that date." Yet this is really less than the measure wherewith he seeks to mete out justice to his antagonist.

An obvious comparison may serve to explain the matter to the non-ecclesiastical mind. Suppose a trader, as many traders do, to have committed an act of bankruptcy upon which no steps were taken and after a lapse of time a customer were to say, "I shall not pay you for those goods I have received from you, you are an uncertificated bankrupt," I apprehend the reply would be in a tone of indignant surprise. "It is true some time ago I committed or suffered such an act, which would have empowered a Court of competent jurisdiction, if they had thought fit after summoning me and hearing the whole case, to have adjudicated me a bankrupt. But who are you? and what right have you to take upon yourself to say what decision the court might have come to? Now I shall make you pay even to the uttermost farthing." This I say would probably be the language between men of business. And how much stronger would the case be, if the trader could conscientiously deny that he ever had committed an act of bankruptcy at all, and that the act of bankruptcy existed only in the imagination of the man who was on this pretense endeavoring to escape from a very clear obligation; whatever reputation for conscientiousness the customer may have claimed for himself, I am afraid the trader and the world generally would place it at a very low standard.

This contention, however, by the defendant's counsel, that the plaintiff is not in fact a Bishop of the Church of England at all makes it impossible for me to take any longer the favorable construction which I felt disposed to place yesterday on his statement in the letter of the

26th September, to the effect (implied) that he only intended to resist the unlawful, not the lawful, exercise of the Bishop's authority. For it now appears that the defendant must thereby have meant that he only intended to resist the lawfulness of the Bishop's authority altogether, and not the exercise of it, if it were held ultimately to be lawful. That of course is holding out no olive branch at all.

Having then examined these Pandora street proceedings much more minutely than perhaps I have any right to examine them (looking to Dr. Warren's case) I have come to the conclusion that the plaintiff is a Bishop of the Church of England, and the defendant is a clergyman of the same church; that the proceedings in Pandora street though not according to the precise form suggested (not required) by the Church Discipline Act in England, were yet in a reasonable analogy with it, the assessorial part being differently constructed from that in Long vs. the Bishop of Cape Town; that the proceedings were conducted in a way consonant with the principles of justice as understood in a Court of Equity; that the findings were true, and that the sentences and whole judgment reasonable and appropriate enough to the offence. It is therefore just that it should be carried out, and if no other ground existed, the inability of the Bishop to execute justice for himself is one of the heads of equity which will maintain a bill. I consider it a necessary inference from the cases in and from South Africa that the local civil courts are bound to interfere on the application of either party, in these spiritual disputes on a proper case being shown. But more than that: the Bishop has a trust to execute, and he has a right to come here as trustee to prevent a misapplication of the funds and lands and buildings just as I apprehend the treasurer or other proper officer of an insurance company would have a right to come here and demand the assistance of the court to get rid of a suspended manager who refused to give up the books or the key of the office. Moreover the plaintiff has probably a right to come here in his character of general overseer of the Church of England to prevent his subordinates from infringing statutes. And by the 14 Charles II, no unlicensed Minister may preach under the penalty of three months imprisonment. It is true the Bishop might probably proceed by indictment under this statute, but there is no reason why he should be driven to a more tedious remedy and wait for the Assizes here which may not be held for some time. Besides the defendant surely does not wish to be prosecuted as a criminal. I should be shocked if anybody were to attribute to him the sordid ambition of wishing to appear a martyr. And if the Bishop were to await for the Assizes, the illegal preaching would be going on in the meantime. Finally in order to carry out the object and spirit of this same statute, the Bishop's manifest duty which he is compelled to discharge is to take steps for excluding him from the pulpit; can I possibly say the Bishop has no right to interfere when it is one of the duties of his high office which he is bound to discharge; or that he has a less right to have a wrong redressed because it is also a statutory misdemeanor? Then again as to the question of marriages. It is impossible to decide anything just now as to the validity of a marriage by an unlicensed clergyman of the Church of England. The statute says that the clergyman in each denomination may celebrate marriages according to the rites and ceremonies of their respective churches and all other marriages are to be void. Whether any clergyman who has been unlicensed can, consistently with the rites and ceremonies of the Church of England celebrate a marriage or indeed officiate in any way as a clergyman of that church is the question to be argued and on which the validity of these marriages depends. It is a grave point, but it cannot be decided now. If I were now to express myself, or if all the three Judges were here and expressed themselves ever so decidedly in favor of the validity of the marriages that could decide nothing. The question may be raised over and over again as touching the status of every wife and husband, as touching the legitimacy of every child, of every marriage celebrated by the defendant, and the decision in one case will not be of any binding force in any other case. Even if every one of these marriages shall be severally decided to be valid, there is in the meantime a cloud and a disgrace necessarily hanging over every wife and every child of such a marriage; the mere doubt is almost as bad as the certainty of the invalidity. It is a fresh instance of the extreme danger of listening to what we suppose to be the voice of conscience; here is a man generally reputed to be of the utmost humanity and the utmost conscientiousness, who disobeys the clearest words of a solemn and reiterated vow, with the necessary and deliberate result of inflicting the most cruel injury upon poor women whom perhaps he never saw before, and generations, perhaps of unborn children, and this in obedience, as he supposes to the dictates of his conscience. It is simply an abuse of terms. There is no conscience in the matter at all, in the sense in which that word is understood by the Court or by any person of understanding. It was long ago pointed out by Lord Coke that a good man will obey the laws, and he quotes the heathen poet, (who may give many lessons to us Christians), answering the question "*Virbonus est quis?*" with the ready and obvious reply, "*Qui consulta patrum qui leges juraque servat*" It is true the heathen moralist immediately goes on to insist upon the necessity of much more than a mere observance of the letter of the law before he will concede to any man the epithet of "good;" a man may, he shows, comply with the letter and yet depart from the spirit of a law. But how can he who fearlessly transgresses both, lay claim to the epithet? or plead conscientiousness.

The letter of the defendant which was this day read at the request of his counsel in open Court, throws a singular light on the whole of the defendant's conduct, in reference to the scene of the 5th December, 1872. Here is a rule restraining heated controversies, and contradictions likely to lead to heat expressed in four lines of the plainest English, and with the most judicious good sense. The 53rd canon says: "If any preacher shall in the pulpit, particularly or namely, of purpose impugn or *confute* any doctrine delivered by any other preacher in the same church or in any church near adjoining before he hath acquainted the Bishop of the diocese therewith and received order from him what to do in that case, because upon such public dissenting and contradicting, there may grow much offence and disquietness unto the people," "the Churchwardens and Bishop are to prevent the offender from again preaching until satisfaction be given by him." No preacher is even allowed to "*confute;*" the offence is quite irrespective of the truth or falsehood of the doctrine impugned. Now any child can see that the defendant's conduct on the 5th December, 1872, was a breach of this canon, except some question be raised on the word "pulpit," but the spirit of it was most clearly broken, and he *says* he exceeded the "customary restraints of language and of conduct." What is required from him is first an acknowledgment of his transgression and then an expression of regret at having transgressed. It is not an apology that is wanted by the Bishop, but repentance. The Bishop does not ask for the defendant's humiliation, but he wants the defendant himself. He is ready always to pardon the man, but how can he restore the presbyter without an acknowledgment by defendant that he has erred. To this hour the defendant refuses to make any such acknowledgment. It is true his letter to-day says that in deference to my opinion he is ready to admit that he has misread the canon. But to this hour he refuses to acknowledge that he has committed a fault; his letter merely amounts to this, "There are two ways of reading the canon, the Court says it is to be taken as meaning one thing, and I bow to the decision of the Court; but I do not admit that construction to be right." In other words he still adheres to his error. What is required from him is, not an acknowledgment that my opinion must prevail over his, but that he feels himself to be wrong. Now, of two things, one! Either his advisers must be aware that he is wrong, but will not admit it—and then what becomes of conscience?—or else they are in reality mentally incapable of understanding four lines of pure plain English and good sense, in which case with what counten-

ance can he or they claim to form even a conjectural opinion upon matters really obscure? If a man cannot understand the 53rd canon how can he claim to direct us in the mazes of ecclesiastical law? "A mighty maze though not without a plan." But how can the defendant be imagined to have a clew to it? or claim a right to direct others in it? or even to walk in it by himself? If any man ever wanted an overseer, surely this man does.

The granting and revocation of a license are very much in the episcopal discretion (Poole's case) at least as to curates who enjoy only a stipend. The case may or may not be different, where the revocation deprives a clergyman of his right to a freehold benefice. All that need be said on that argument is, that it does not arise here. On the materials now before me I must take it at all events, that there is no freehold benefice held by the license. It was very strongly urged, however, at the bar, that where a license is so coupled with pecuniary emolument that the money cannot be pocketed unless the license be continued, such license cannot be arbitrarily revoked, either in an ecclesiastical or any other case. There is much force in the argument so far as the word "arbitrarily" enters into it. Dr. Povah's case is an authority for that. In fact Poole's case, though it declares that the Bishop or Archbishop has a discretion, insists also that that discretion shall be discreetly exercised, *i. e.*, not wantonly nor without due consideration, nor without notice to the curate; but when so exercised this discretion will not be interfered with. There must be some authority somewhere. I have little doubt but that it exists in this Court, to examine on *mandamus*, or prohibition, or bill for injunction, or in some way, into the exercise of this discretion by the Bishop. *i. e.*, as in Povah's case, into the manner in which the discretion has been exercised. But if the Bishop has examined duly and disapproves, Lord Ellenborough intimates that the Court will not say "approve though you do not approve, take our conscience instead of your own." This is especially true perhaps if the license is accompanied by any interest or dignity. In fact I have been examining into that discretion in this very case; I am not sure that I was authorized to do so, but it seemed to be the desire of both parties and the defendant at least loudly demanded it. I do not say that my conduct in this respect is to form a precedent. In Dr. Warren's case the Court being once satisfied that the Wesleyan Conference was authorized to act, refused to examine into or to sit all to consider the propriety of the particular line the Conference had thought fit to adopt. The fatal error in the defendant is, that he has taken no steps to rectify or annul the erroneous revocation, if it were erroneous. He has not even attempted to restrain the plaintiff's conduct. But until set aside the revocation is of course in existence and in force. Take an example from this very Court.

The order which I am about to make, may in the opinion of the defendant's advisers be wrong. But really until it is set aside, I must warn them that they must obey it. It will not do for them to say that I have made a mistake, and therefore it appears to them that I have renounced my allegiance and torn up my Commission, and I am *ipso facto* not a Judge of the Supreme Court. The other two judges will soon be here, and this order may by them be reviewed, I am happy to say, perhaps reversed. But until it is reversed, those two judges will enforce its observance in all its strictness and in what they, not the defendant's advisers, deem a conscientious manner, and they would probably be inclined to treat any such line of action as that which I have suggested very seriously; and this, although they should both have formed the opinion that my order on re-examination could not be allowed to stand, it must stand until it is dissolved. And so with the defendant's license, until he gets a license from the Bishop either compulsorily or by the order of some competent court, or voluntarily by making a proper acknowledment of his errors, and praying forgiveness and promising amendment he is an unlicensed clergyman. The Act of Uniformity, says he shall not be allowed to preach or officiate, not at least as a clergyman of the Church of England, nor in a building consecrated to the service of the Church of England. Nor has the Bishop any choice whether he will or not take these proceedings or some proceedings for preventing him from so doing. The Bishop, to use the words of Sir Herbert Jenner Fust, in Burder *v.* Langley, "would not have properly discharged the duties of his high office," if he had permitted an unlicensed person so to preach or officiate. There is of course unlimited freedom of conscience here as in England. Everybody, whether he has ever been ordained in the Church or not, is at liberty so far as the lay courts are concerned, to preach what he likes and where he likes, (within certain limits of public decency.) Only the law says, "You shall not do this in the character of a clergyman of the Church of England, nor in any English Church, without the license of the Bishop. You may not run with the hare and hunt with the hounds." The defendant's counsel urged that this rule does not apply to the defendant, because to apply the rule would be to deprive him of $200 *per annum*. Really I think that is a case of oppression of conscience, this is a very curious line of argument. You are oppressing a man's conscience if you refuse to allow him to continue receiving $200 per annum when he breaks every stipulation upon which it was to be paid to him. Now the law lays down the same rule for all religious denominations and indeed for all voluntary associations here religious or secular. Leave the association and you may do as you like. But you shall not be allowed to occupy the Church of your denomination or the offices of your Joint Stock Company (I make the comparison with some apology, but really the principle is exactly the same) and at the same time set at defiance the rules of the voluntary association to which you say you belong. Nay, more; you shall not be allowed to act here or hold yourself out as the agent of the association, trading or otherwise, against and in defiance of their rules. Everybody will see the monstrous injustice of allowing the Secretary of an Insurance Co., after he has been suspended by the manager, to continue in occupation of the Company's offices, or allowing him to set up next door, or anywhere within the sphere of the Company's business, and hold himself out to the world as secretary to the Company still. And surely the injustice to the Company would not be less if the court by refusing to interfere enabled this *soi disant* secretary to draw salary out of the company's funds. That really is the whole of the case. The manager may be wrong but while the secretary is suspended, he really may not stay there.

I have endeavored to make clear to the defendant in the course of the argument, the result to which everything pointed, and I have given every opportunity in my power, and used every argument which suggested itself, to endeavor to heal an anticipated breach in our little community. I feel sure that if the defendant would but listen to the words of his counsel, instead of yielding to the fatal influence of heated and ignorant partisans, matters might even now be healed. As to this being a question of conscience or conscientiousness, it is a mere delusion to suppose that conscience has anything to do with the present dispute. Mr. Reece's doctrine has never been approved. The defendant's doctrine has never been blamed. Both gentlemen are probably within the true limits of doctrine deemed by our Church to be necessary. No right of conscience is or ever has been sought to be invaded here, except the right that every man may do just that which is good in his own eyes. If that be what is meant by "rights of conscience" there is no more to be said, but that all cases and instances of society, in Church and in State, in trade and in the family, the most savage and the most polite alike, are constructed and can alone cohere on the exactly opposite principle: viz., that if society is to subsist at all, men can *not* be permitted to do everything that is right in their own eyes. And all laws and regulations of society, are at bottom nothing more than a statement of what a man may do, and what a man may not do, of those things which appear to him right, or desirable. The plaintiff in this case appears to me to have acted with excessive forbearance and long suffering. He now comes here in performance of a statutory duty, the contained neglect of which would subject him to very painful personal consequences, and

it even appears to me that the Churchwardens of Christ Church, or perhaps any three or more members of the congregation might probably have successfully applied for a *mandamus* very many months ago to compel the Bishop to interfere much more vigorously than he has done. I am very far from saying the court could interfere without the Bishop, or in any way except simply to supply coercive power to a lawful order. His reluctance to exert his power may however, obviously be imputed to motives of the most christian forbearance; it is the proverbial propensity of bishops which gives rise continually to complaints. It certainly does not lie in the defendants mouth to raise any objections on the score of laches, and to do him justice, he did not raise any such objection. But if the defendant had been at once in December, 1872, excluded from the pulpit of Christ Church, until due submission I should not now have had the most painful duty of attending to this distressing case, and probably much correspondence of a most disagreeable nature would have been avoided.

There must be an injunction, as the defendant will not make proper submission, which even now I should strongly suggest to the plaintiff's counsel to accept if offered. There is no offer, so there must be an injunction as prayed. It will be until further orders. I hope if the defendant will submit that this order may by consent be presently dissolved and the whole bill dismissed. I make no other order except for the injunction which will be distinctly understood to extend most especially to celebrating marriages.

MATTHEW B. BEGBIE, C. J.